93-746

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NUMBER 93-

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH and DELBERT L. JACKSON,

Petitioners,

v.

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. Does the Constitution prohibit state courts from declaring a congregation of a hierarchical church an independent church and transferring real property from the denomination to its former congregation when the denomination's and congregation's corporate documents prohibit secession, but the congregation purports to secede because of dissatisfaction with the way the head of the church is running it?

B. Do state courts infringe the First Amendment rights of a party to litigation when they apply court rules to sanction the party's counsel for submitting pleadings petitioning for redress of the party's grievances?

PARTIES TO THE PROCEEDING

Plaintiffs/Appellees:

Mother African Union First Colored Methodist Protestant Church, a Delaware religious corporation.

Morris A. Comegys and Sara B. Gardner, individually and as representatives of a class of 229 members of the Mother AUFCMP Church.

Defendants/Appellants:

Delbert L. Jackson.

The Conference of African Union First Colored Methodist Protestant Church, a Delaware non-stock corporation.

There is no parent company or partly owned subsidiary to be listed.

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TREATISES:

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A. Kinoy, Rights on Trial (1983) . . 13

DECISIONS BELOW

The appellate court issued no opinion but relied on three of the trial court's opinions. Those trial court memorandum opinions entered 15 May 1991 [A082], 22 April 1992 [A032], and 20 May 1992 [A011] were not officially reported, but the first two of them were unofficially reported at [1991] Del.Corp.Lit.Rep. 8741 (Del.Ch. 1991) and [1992] Del.Corp.Lit.Rep. 10536 (Del.Ch. 1992).

GROUNDS FOR JURISDICTION

The decision below was rendered by the Delaware Supreme Court on 14 October 1993. No rehearing was sought. This Honorable Court has jurisdiction in this cause pursuant to 28 U.S.C. §1257(a) & §2101(c).

PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS:

Amendment I:

> Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof; or abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances.

Amendment IV:

The right of the people to be secure . . . against unreasonable . . . seizures, shall not be violated . . .

Amendment V:

No person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1:

. . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

DELAWARE SUPREME COURT RULES:

Del.Sup.Ct.R. 34:

The Court may strike any brief, appendix, motion or other paper or document which does not conform to these Rules or which is not within the bounds of professional propriety.

Del.Sup.Ct.R. 102(b):

Conduct of Attorneys and Litigants. Attorneys and litigants shall conduct themselves before the Court in a

manner consistent with the letter and spirit of these Rules. Attorneys are expected to take all necessary steps to avoid unreasonable delays and are expected to present all matters and papers to the Court with the highest professional competence and integrity.

DELAWARE CHANCERY COURT RULE 11:

> . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other papers is signed in violation of the Rule, the Court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

STATEMENT OF THE CASE

The Conference of African Union First Colored Methodist Protestant Church, the oldest independent black denomination in the country, is a hierarchical church founded in 1813; it is also a Delaware corporation. Bishop Delbert L. Jackson has headed the Church since 1988. The Mother African Union First Colored Methodist Protestant Church is a local congregation in the Conference; it is a Delaware religious corporation. Morris Comegys and Sara Gardner were members of the Mother Church congregation.

On 18 April 1991 Comegys and Gardner sued Jackson in Delaware's Chancery Court, on behalf of the members of the Mother Church congregation, for a declaration that that congregation had validly seceded from the Conference and to void a 6 April 1991

quitclaim that had transferred title of the Mother Church building, cemetery, and parsonage from the Mother Church to the Conference [A083]. The reason for the secession was the congregation's dissatisfaction with Jackson's management style [A090]; an exhibit to the complaint was the Mother Church's employment contract with the pastor Jackson had appointed, in which the trustees of the Mother Church promised to abide by the Book of Discipline [A102-03], the corporate bylaws of both the Conference and the Mother Church.

The day after the complaint was filed, Vice Chancellor Jack B. Jacobs granted the plaintiffs a temporary restraining order to use the Mother Church building [A084], and then he joined the Mother Church as a plaintiff and the Conference as a defendant. At every hearing and in every brief defendants asserted that this was an in-

ternal dispute over administration of a hierarchical church, so the First Amendment required civil courts to defer to the decision of the highest ecclesiastical authority, and that secular language in the corporate parties' charters and bylaws required property to remain with the Conference when a congregation's members seceded, and that Delaware's neutral rule favors denominations over member congregations [A095-96].

In his opinion granting plaintiffs a preliminary injunction the vice chancellor ruled that the Church might be hierarchical as to spiritual affairs but was not hierarchical as to temporal affairs [A096]; recognizing that he was dealing with a schism [A051] (or "power struggle" [A068, n. 12]) within the Church, he ruled that he could nevertheless decide the case as long as he addressed "only the legal questions" [A092]. At every stage after the TRO hear-

ing he placed on defendants the burden of disproving the conclusions he had drawn then [A098-99], and he ruled after trial that they had not met that burden [A034; A041, n. 3; A053].

During the Chancery Court proceedings the vice chancellor repeatedly sealed or struck parts of the record and ordered defendants' counsel not to distribute pleadings filed in other courts [A062-63; n. 11, A064]; if he had thought of it, he would have enjoined everyone from suing the plaintiffs in other courts [A076]. In April 1992 he ordered counsel to schedule a funeral at the Mother Church, and she moved to withdraw, asserting an ethical conflict between the interests of the Conference and Bishop (whom she represented in the litigation) and the pastor of the Mother Church (whom she had represented since before the litigation began but who was not

a party to the litigation and who was the Mother Church's employee under its bylaws and employment contracts) [A019-20].

The vice chancellor wanted to hold counsel in contempt but was unable to find authority to support such a finding [A021-22], and then she complained to Delaware's Court on the Judiciary that his conduct throughout the case had been aberrational. A week later he sanctioned her, ruling that her application to withdraw had been filed to harass her opponents [A030]. The Court on the Judiciary then summarily dismissed her complaint [In re: Hon. Jack B. Jacobs, No. 9, 1992 (29 May 1992)].

The Chancery Court entered its final judgment order on 24 February 1993, and defendants timely noticed their appeal to Delaware's Supreme Court. In their opening appellate brief defendants raised the federal question, saying at ¶9 of the "Summary

of Argument":

> The trial court contravened the First Amendment by awarding the church's property to dissident former members when explicit secular language in the corporate documents provided otherwise.

In their reply brief defendants argued, inter alia, the trial court had erred by denying other states' courts' judgments full faith and credit and by applying the court's rules, the ethics rules, and the rules of evidence to deny defendants a fair hearing. The appellate court struck that brief from the record [A003]. Defendants filed another reply brief [A101] again asserting that the First Amendment required civil courts to defer to the decisions of the highest ecclesiastical authority in this hierarchical Church [A107-10]. The court affirmed, by order dated 14 October 1993 [A001], without issuing any opinion.

REASONS FOR ALLOWING WRIT

Certiorari should be granted in this case for the following reasons:

1) This decision is in conflict with the decision of the United States court of appeals for the District of Columbia on the same matter.

2) This decision is in conflict with applicable decisions of this Court.

The Religious Rights

The Conference was incorporated in 1813 as the "Union Church of Africans"; since its 1866 merger with part of the First Colored Methodist Protestant Church it has usually been known as the "African Union Methodist Protestant Church." Its history is well documented, especially in two treatises by Professor Lewis Baldwin of Vanderbilt University, whom both sides in this case recognize as the foremost

authority on the history of this Church: L. Baldwin, "Invisible" Strands in African Methodism: A History of the African Union Methodist Protestant and Union American Methodist Episcopal Churches, 1805-1980 (ATLA Monograph No. 19, 1983); L. Baldwin, The Mark of a Man: Peter Spencer and the African Union Methodist Tradition (1987).

In 1851, when the denomination was called the "African Union Church" and the Mother Church congregation was called the "Union Church at Wilmington," the members of the Mother Church refused to let their presiding elder Ellis Sanders preach to them, so he sued the Church in Delaware's Superior Court and was granted a writ of mandamus. On appeal, Delaware's then-highest court reversed, opining that the separation-of-church-and-state clause in Delaware's constitution [A101-02] deprived civil courts of jurisdiction over internal

disputes as to ecclesiastical "functions and discipline." Union Church of Africans v. Sanders, 6 Del. (1 Houst.) 100, 126 (Del. 1855).

In that opinion the Court of Errors and Appeals also recited the history of the Church's first four decades, while those facts were within living memory, including the publication of the first Discipline or bylaws [at 103], the growth of the denomination into four states besides Delaware [at 104], and the establishment of the Yearly (later, "Annual") Conference as the governing body [at 104].

In 1954 the members of the AUMP congregation in Washington, D.C., disgruntled because the presiding prelate was transferring their pastor to another church, voted to secede from the Church; St. Paul's was a D.C. corporation that held legal title to the congregation's real property. The

Conference sued them and won title to the real estate in the trial court, and that decision was affirmed on appeal. Cleaver v. Conference of AUFCMP Church, 240 F.2d 57 (D.C.Cir. 1956).

In 1989 the members of the AUMP congregation in Lancaster, Pennsylvania, disgruntled because the presiding prelate was transferring their pastor to another church, voted to secede from the Church; St. Paul's was a Pennsylvania corporation that held legal title to the congregation's real property. The Conference sued them and won title to the real estate in the trial court; that decision is still on appeal. In Conference of AUFCMP Church v. Shell, 627 A.2d 188 (Pa.Super. 1993), the Superior Court transferred the appeal to the Commonwealth Court, where oral argument is scheduled for 16 December 1993.

Encouraged by the Mother Church's suc-

cess in Chancery Court, since autumn 1991 other AUMP congregations have sued the Conference in their state courts for declarations of independence and title to their real estate: two Pennsylvania congregations filed separate suits; five Delaware congregations filed two suits in Chancery Court, one Maryland congregation filed suit, and one New Jersey congregation filed suit in state court, and the Conference removed it to federal court. None of those cases has yet reached trial, and the two in Delaware were stayed pending the Delaware Supreme Court's decision in this case.

Even if the Delaware decision were not contrary to every church-property decision this Court has ever made, stopping this frenzy of litigation by resolving the conflict between the D.C. and Delaware decisions would be sufficient reason to grant certiorari.

The Expression Rights

There is a second aspect to this case that also merits consideration, however, and that is petitioners' free-speech and petition rights. Every defendant has the right to due process before his property is transferred to the plaintiff, and every citizen has the right to petition the appellate court to remedy denials of due process in the trial court, but few persons can exercise those rights pro se. When state courts impose professional sanctions against an attorney for asserting her client's fundamental rights, they abridge those rights, not only for that client, but for every party who will not be able to hire an attorney to assert his rights because of the chilling effect.

Vice Chancellor Jacobs says it is unethical for a lawyer to put her client's interests ahead of her duty to be an ob-

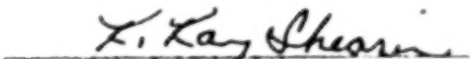
jective officer of the court [n. 11, A065-66]. Arthur Kinoy says, "Without lawyers, able and willing to fight for constitutional rights, the rights themselves were meaningless words written on a piece of paper." A. Kinoy, Rights on Trial 240 (1983).

Clients' free-speech cases often involve defamation or pornography, where the Court must balance conflicting societal interests; lawyers' free-speech cases often involve commercial speech, where the Court must balance the conflicting financial interests of the lawyer and client. This case does not involve any of those conflicting interests--it presents the plain vanilla question of whether an attorney is her client's mouthpiece or the court's shill, appearing to speak for her client when she is in fact muzzled by the court's rules.

Petitioners urge the Court to grant

this writ and thereafter to reverse the ruling below.

Respectfully submitted,



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